1989-1990 ANNUAL REPORT

April 1, 1989–March 31, 1990

Human Rights

British Columbia Council of Human Rights

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The Honourable Norman Jacobsen
Minister of Labour and Consumer Services
Parliament Buildings
Victoria, British Columbia

Sir:

On behalf of the British Columbia Council of Human Rights, I am pleased to submit to you the Annual Report of the British Columbia Council of Human Rights for the period April 1, 1989 to March 31, 1990.

Judith Williamson
A/Chairman

Remarks From the Chairman

This reporting period has again seen an active role by the Council and staff in increasing awareness of the *Human Rights Act*. The Council and staff received, investigated, and adjudicated an increasing number of complaints of discrimination from persons throughout the province. This year, we accepted 424 complaints, up from last year's total of 348. Amendments to the *Act* passed in 1989 allowed the Council to streamline the complaint process. The new procedures are described in Part II, Complaint Procedure and in Appendix F, the *Human Rights Act*. Amendments to the *Act* which will be proclaimed in the fall of 1990 are also included in Appendix G. This amendment will prohibit discrimination in tenancy on the basis of family status.

One of the most effective ways of reducing discrimination is through public education. During this reporting period, the Council and staff interacted with the community through speaking engagements, publications and school projects. These are described in Part IV — Public Education Initiatives.

Racism continues to poison our society. Anti-Semitism, attacks on Sikhs, intolerance of Francophone Canadians, and bigotry directed toward Aboriginal persons are obvious examples of racism in B.C. and Canada. In order to sensitize young people, the Council made racism the theme of its annual student poster and essay contest. Each year, the Council recognizes International Human Rights Day on December 10, 1989 with this contest, which encourages young people to get involved with human rights issues. Participation in the contest was enthusiastic and all entries showed an appreciation and understanding of the seriousness of this issue. A brief report on racism, prepared by Council, concentrating on the problems experienced in B.C. and across the country is included in this year's annual report.

In other areas, there were two important human rights decisions by the Supreme Court of Canada. In the *Janzen* v. *Platy Enterprises* decision, the Supreme Court of Canada unanimously ruled that sexual harassment is sex discrimination, overturning a decision of the Manitoba Court of Appeal which found that sexual harassment was not sex discrimination within the meaning of the *Manitoba Human Rights Act*. In the *Brooks* v. *Safeway* decision, the Supreme Court unanimously ruled that Safeway's employee disability plan discriminated against pregnant employees, and constituted discrimination because of sex within the meaning of the *Manitoba Human Rights Act*. These two cases are landmark decisions which advance the rights of women in the workplace.

Just prior to the publication of this Report, John I.D. Joe, Chairman, left the Council to become a Provincial Court Judge. The Council would like to extend its appreciation for the wise and thoughtful leadership of John Joe during the last three years.

Finally, I would like to thank the Council, staff, Industrial Relations Officers and all others who have worked to further the principles of human rights during this past year.

Judith Williamson,
Acting Chairman

I The Administration of Human Rights in British Columbia

(a) Mandate of the Council

The British Columbia Council of Human Rights was created in September 1984 upon the proclamation of the British Columbia *Human Rights Act*. Since 1984, human rights complaints have been received, investigated and adjudicated by the Council. This administrative agency is mandated to review, in an impartial manner, allegations of discrimination, and where necessary, to hold a hearing into the matter.

What does "discrimination" mean? The general concept of discrimination has been fairly well settled by the Supreme Court of Canada when considering Human Rights Acts. Dickson C.J. has spoken favourably of the 1984 *Report of the Commission on Equality in Employment*, (the *Abella Report*), in both *Brooks* v. *Canada Safeway Ltd.*, (1989) 10 C.H.R.R. D/6183 and *Canadian National Railway Co.* v. *Canada (Canadian Human Rights Commission)*, (1987) 8 C.H.R.R. D/4210. The report, prepared by Judge Rosalie Abella, identifies discrimination as:

> . . . practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics . . .
>
> It is not a question whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.

Discrimination on the basis of race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex, age, and criminal or summary conviction are all prohibited by the *Human Rights Act* (See Appendix F for a complete text of the *Human Rights Act*). Family status discrimination in tenancy is prohibited by the *Residential Tenancy Act* and governed by the *Human Rights Act* (See Appendix G).

The Council is also responsible for approving special programs designed to remedy substantive inequalities in our society (section 19). Without the Council's approval, these programs would contravene the *Human Rights Act*.

(b) Jurisdiction of the Council

The Council's authority is restricted to matters within provincial jurisdiction. Federal matters are dealt with under the *Canadian Human Rights Act*.

The British Columbia *Human Rights Act* sets out prohibited grounds of discrimination in the workplace, in public facilities, tenancy, purchase of property, employment advertising, wages, publications, and membership in trade unions and employer and occupational associations. The *Act* also provides protection for complainants or witnesses who are the subject of retaliation because they assisted in the filing of a complaint.

(c) Members of the British Columbia Council of Human Rights

Council Members are appointed by the Lieutenant Governor in Council. The five Council Members during this reporting period were: Lorna Barr, Helen Hughes, John Joe (Chairman), Eric Powell, and Douglas Wilson.

The following staff members of the Council were involved in the administration of human rights complaints through the Council in this reporting year.

Victoria Office:

Alan Andison	A/Director Management Services and Compliance
Judy Attewell	A/Secretary to Council
Allison Bond	Law Co-op Student (04/89–08/89)
Patt Cromer	Hearing Secretary
Rita Fayle	A/Intake/Disclosure Officer
Susanne Harnden	Office Clerk Trainee (03/90–present)
Niall Maloney	Office Clerk Trainee (12/89–02/90)
Brad Martyniuk	Law Co-op Student (08/89–12/89)
Linda McCurdy	A/Administrative Services Manager
Glenna McEwan	Case Management Clerk
Heather Meadows	Receptionist/Clerk
Patti Steele	Intake/Disclosure Officer
Mark Tatchell	A/Manager of Investigations
Sheila Twilley	Case Management Clerk
Mike Vos	Law Co-op Student (01/90–04/90)

Vancouver Office:

Muriel Hancock	Receptionist
Gillian MacGregor	Intake/Disclosure Officer

II Complaint Procedure Under the *Human Rights Act*

Introduction

The purpose of the *Human Rights Act* is to eradicate discrimination. The *Human Rights Act* is therefore remedial and not punitive in nature. The Council's procedures are designed to ensure that all complaints alleging discrimination are dealt with as expeditiously as possible following the principles of administrative fairness and natural justice. The following describes the Council's complaint procedures in some detail. There have been some changes to these procedures as a result of amendments to the *Human Rights Act* in 1989.

(a) Filing the Complaint

In most cases, a complaint is initiated through telephone contact with our Vancouver or Victoria offices (the latter has a toll-free number: 1-800-663-0876) or an Employment Standards Branch Office. Other Complainants come in person to file their complaints and some are initiated by mail.

The individual, or someone on his/her behalf, then submits either a letter or a Complaint Form, available at any Council or Employment Standards Branch office. The complaint must be received by the Council within six months of the alleged discriminatory act(s) unless the Council decides that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

After receiving the complaint, an Intake/Disclosure Officer will contact the Complainant and assemble more information on the matter, including identification of the Respondent(s). Intake documents are prepared using the information gathered.

(b) Review by Council

The Chairman (or his delegate) reviews the intake documents prepared by the Intake/Disclosure Officer. Based on this information, the Chairman (or his delegate) decides whether the complaint should proceed to investigation. Decisions to discontinue the complaint must be made by a panel of three Council members. Proceedings will be discontinued where the complaint:

(i) is not within the Council's jurisdiction;

(ii) is better dealt with under another Act;

(iii) is trivial, frivolous, vexatious or made in bad faith; or

(iv) was filed past the six month limitation period.

(c) Investigation

If the Chairman (or his delegate) decides that an investigation is warranted, the case is assigned to an Industrial Relations Officer (I.R.O.) in the region where the complaint originated. Facts surrounding the alleged incident(s) of discrimination are generally assembled in an impartial manner, through personal interviews by

the I.R.O. assigned to the case. Potential sources of information to which the I.R.O. may turn are the Complainant (the person making the complaint), the Respondent (the person or company the complaint is against) and witnesses or other persons involved. The I.R.O. may also collect relevant records and documents. The Officer will also endeavour to assist the parties in settling the complaint. At the conclusion of the investigation, the I.R.O. submits a final report to the Council.

The Manager of Investigations coordinates the investigations and ensures that all relevant information is gathered.

(d) Disclosure

Once the I.R.O.'s investigative report is received by the Council, a summary of the investigation is sent to the parties involved in the complaint. The Complainant(s) and the Respondent(s) then have thirty days to respond to the report and make any amendments. Any new relevant information will also be disclosed in order to give the parties an opportunity to respond to the new information.

(e) Decision After Investigation

After this disclosure, the Chairman (or his delegate) reviews the complaint. Under section 14 (1) of the *Human Rights Act*, it is then determined whether to:

(i) discontinue the proceedings;

(ii) submit a report to the Minister; or

(iii) designate one Member of the Council to hold a hearing.

The section 14 (1) decision is communicated to the parties in writing. A panel of three Council members makes the decision to discontinue the proceedings and the Complainant receives written reasons for this decision.

(f) Hearing

The hearing is conducted by a designated Member of the Council (the "Member Designate") who has no previous involvement with the complaint. This ensures that hearings are fair and impartial. The proceedings are open to the public. The Complainant and the Respondent are entitled to legal representation. If either party cannot afford a lawyer, he or she may apply for legal assistance through the Legal Services Society of British Columbia. During the hearing, evidence is presented, witnesses are examined and cross-examined under oath, and other submissions are made. Any evidence which would be admissible in a court of law is admissible in a Council hearing. The Member Designate, however, is not bound by strict rules of evidence, and has the authority to receive all relevant information.

(g) Decision and Order

After the hearing, the Member Designate writes a decision which is sent to the parties. Ten days after the decision is sent to the parties, it is released to the press and public.

If the complaint is found to be substantiated, the Member Designate will make an Order pursuant to section 17 (2) of the *Human Rights Act*. The Member Designate:

(i) shall order the person who contravened the Act to cease the contravention and to refrain from committing the same or a similar contravention;

(ii) may make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the Member, he or she was denied contrary to the Act;

(iii) may compensate the person discriminated against for all, or a part of, any wages or salary lost, or expenses incurred, by the contravention; and

(iv) may order, in addition to, or instead of (ii) and (iii), that the person who contravened the Act pay to the person discriminated against an amount not exceeding $2,000.

This order may be filed by the Complainant with the British Columbia Supreme Court, after which the Order has the same force and effect as an order of that Court. Orders may then be enforced under the *Court Order Enforcement Act*.

(h) Judicial Review

Any party to the complaint may seek judicial review of the Council's decision by the British Columbia Supreme Court under the *Judicial Review Procedure Act*. In *Cohen* v. *B.C. Council of Human Rights and Norpac Controls Ltd.* (1990), unreported B.C.S.C., Lysyk J. states:,

> The Act does not contain a privative clause. Accordingly, a decision of the Council is subject to being set aside on judicial review for any error of law relating to interpretation of the Act, not merely one that is patently unreasonable: *Renaud* v. *Central Okanagan School District No. 23* (1989), 90 C.L.L.C. 16,018, at p. 16,020 (B.C.C.A.).

(i) Statistics

In this reporting year, the Council reviewed 424 complaints accepted for intake. Twenty-six cases were settled prior to investigation and 53 were dismissed after the initial review. Of those cases dismissed, 49 were found not to be within the jurisdiction of the Council, one was trivial, frivolous, vexatious, or made in bad faith, and three were filed past the limitation period.

During or following investigations, 129 cases were resolved. After investigation, proceedings were discontinued in 59 cases, and 130 were referred to hearings. At the end of this reporting period, 291 cases remained under investigation.

In this reporting period, the Council held 49 hearings. During this same period, 30 complaints which were scheduled to be heard were settled between the parties prior to a hearing and there were 17 where the Complainant did not pursue the matter. The Council issued 36 decisions: 29 were in favour of the Complainant and seven complaints were dismissed.

At the close of the period, 429 files remained open (this includes this year's files as well as files from previous years). For a complete statistical description of the Council's activities, see Appendix C.

III Special Programs: Section 19 (2)

Anyone may seek the approval of the Council for a program or activity whose goal is the improvement of the conditions of disadvantaged individuals or groups. The Council may, after a review of the objectives of the program, deem that it is not in contravention of the Act.

The Council granted exemptions to a variety of activities and programs during this reporting period.

Bridging and Rotation Programs, Ministry of Parks — The Council granted an exemption for rotation and bridging positions for women, Aboriginal persons, persons with disabilities, and visible minorities. A rotation program is a position to which employees are appointed on a time-limited basis in order to broaden their experience. A bridging position is intended to provide employees with access to higher level positions within B.C. Parks by providing them with an opportunity to gain the experience necessary to prepare them to apply for such positions. These positions are for people currently employed in, or who may be applicants for, positions within the Ministry.

Bridging positions, Ministry of Education — The Council granted approval of a program which allows the Ministry of Education to identify bargaining unit and management positions when vacancies arise and use those positions to increase the representation of female employees in upper level bargaining unit and management positions. The Ministry's purpose for the application is the disproportionate representation of males in management positions. The Ministry believes that this unequal participation can be remedied, at least in part, by providing bridging opportunities for female staff members.

Bursaries for Native Students, Ministry of Health — The Government of the Province of British Columbia has created certain bursaries in the field of health care for students who are British Columbia residents of Aboriginal ancestry. The purpose of the bursaries is to encourage more Aboriginal health care professionals and para-professionals in the Province. This is an area where Aboriginal peoples are greatly underrepresented.

Other programs approved by the Council were the University of Victoria Employment Equity Program and the Ministry of Social Services and Housing Hiring Program.

IV Public Education Initiatives

Introduction

The Council has initiated a variety of publicly oriented activities concerning human rights. Pamphlets and brochures have been published providing guidelines and general information about the *Act* and the Council's procedures. In this reporting year, the Council answered over 7,950 human rights inquiries, and sent out over 27,890 copies of guides and brochures.

The following are a few examples of other activities engaged in by the Council.

(a) School Programs

(i) POSTER AND ESSAY CONTEST

This year the Council successfully organized its fifth annual poster and essay contest for elementary and secondary schools. The Council conducts this activity every year as part of its program commemorating International Human Rights Day (December 10).

The contest this year focused on the issue of racism. The goal of the contest was to have the students think seriously about racism and why it cannot be tolerated in any form. All participants showed a keen interest and insight into human rights and must be commended. The Council received over 200 posters and murals from students in grades 1 through 12.

There were three categories of entries: murals (kindergarten–grade 7), posters (grades 8–12) and essays (grades 8–12). The winning students in each category were awarded $200 and a certificate from the Council.

Mural projects were undertaken as class efforts and participation in the contest was enthusiastic. The winners this year were: Khalsa School, Vancouver (Grade 4); Alexander Park School, Golden (Grade 7); and West Bench School, Penticton (Grades 1 and 2).

The poster contest at the Secondary School level consisted of individual submissions. Students were given the challenge of expressing their thoughts about racism in a poster. The winners this year were: Ross Young, (Windemere Secondary School, Vancouver); Cheryl Arnouse (Chase Secondary School, Chase); and Sherry Medelko (Windemere Secondary School, Vancouver).

Essays were judged on originality, planning, coherent argument, comprehension of human rights, and competence in grammar and spelling. The winners this year were: Lisa Togher (Mount Baker Secondary School, Cranbrook); and Phaedra Margellos and Lynne Lee (both of Crofton House School, Vancouver).

(ii) HUMAN RIGHTS CURRICULUM UNIT

The Council's first comprehensive human rights curriculum unit was published in August and distributed to Grade 11 social studies and Grade 12 law teachers throughout the province.

The unit introduces students to human rights by challenging their own prejudices and stereotypes. In addition, the unit examines both case studies and the legislation.

The Council completed in-service training seminars on the unit with teachers in Nelson, Kamloops, Qualicum Beach, Victoria, Surrey and Kelowna. These seminars were arranged through the Legal Services Society Schools Program.

Teachers and students have responded favourably to the unit and there has been a considerable interest in it from other jurisdictions.

Copies of the curriculum unit which consists of a six lesson teacher's manual and accompanying student's manuals are available from the Council's Victoria office.

(b) Speaking Engagements

Staff and Council Members spoke at 71 different functions and gatherings around British Columbia this year. These speaking engagements included:

- Penticton Women's Center Public Meeting
- Bridges Job Entry Program (Victoria)
- Ministry of Social Services and Housing (Vancouver)
- United Way Referral Agents Program (Victoria)
- Penticton University Women's Club
- Youth Employment Strategy (Vancouver)
- Unitarian Church Group (Vancouver)
- Vernon Multicultural Society
- Public Legal Education Society (Vancouver)
- Pitney Bowes Business College (Vancouver)
- Camosun College Job Re-entry program (Victoria)
- Inter-Cultural Association (Victoria)
- Control Data Institute (Vancouver)

(c) National and International Liaisons

The British Columbia Council of Human Rights is a member of and participant in a variety of provincial, national and international human rights organizations. Involvement this year included hosting the 1989 Canadian Association of Statutory Human Rights Agencies (CASHRA) Conference in Victoria. Council Member Douglas J. Wilson was the President of CASHRA for the 1988-1989 term. The purpose of CASHRA is to act as a vehicle for the exchange of jurisprudential, educational, and human rights information to member agencies, to assist in planning and fostering co-operative services, and to advocate human rights issues. Towards this end, this was the first CASHRA Conference open to the media and the public.

Approximately eighty delegates attended, representing thirteen human rights jurisdictions including the Canadian, Provincial and Territorial Human Rights Commissions and Councils. "Equity in the 90's - A Practical Approach" was the theme and topics discussed at the conference included: The Effect of the Charter of Rights and Freedoms on Human Rights Legislation; Employment Equity; Solutions to Racial Discrimination; Native Indians and the Justice System; and the Teaching of Human Rights. There were many speakers worthy of note, among them the Honourable Justice Beverley M. McLachlin, Supreme Court of Canada; the Honourable Justice Walter S. Tarnopolsky, Supreme Court of Ontario; Max Yalden, Chief Commissioner, Canadian Human Rights Commission; William Black, Faculty of Law, University of British Columbia; Catherine Frazee, Chief Commissioner, Ontario Human Rights Commission; William Pentney, Human Rights Research and Education Centre, University of Ottawa; and Andrew Petter, Faculty of Law, University of Victoria. The 1990 conference will be held in Whitehorse, Yukon, where the theme will be "Human Rights and Aboriginal Peoples: Can Canada truly be a model?".

The Council is an active participant in CASHRA's standing committee on human rights training which publishes a training bulletin and allows member agencies to exchange information. Involvement in this committee aids the Council in carrying out training for staff and Industrial Relations Officers.

The Council is also represented on the Federal/ Provincial Medical Legal Committee which examines human rights questions as they relate to medical issues.

Continued involvement in the Federal/ Provincial/ Territorial Continuing Committee of Officials Responsible for Human Rights helped to monitor Canada's compliance with those international conventions of which Canada is a signatory. Council Member Douglas J. Wilson is British Columbia's official representative. This year, the United Nations adopted the UN Convention on the Rights of the Child. The Convention will come into force only when all member states have ratified it. The goal is for Canada to ratify the Convention by Spring 1991.

The Council continued its involvement with the Law Related Education Group, which is an affiliation of various organizations whose activities involve public legal education. Participants include representatives from the Women's Legal Education and Action Fund (LEAF); the People's Law School; the Legal Services Society; representatives of various university departments; the Law Foundation; secondary school teachers; and staff members of the Ministries of Education and Attorney General. The group meets three to four times annually.

Finally, the Council has been represented by Council member Eric Powell on the provincial Special Advisory Committee on Ethical Issues in Health Care.

V The Protection of the Rights of Persons Based on their Race, Colour, Ancestry, and Place of Origin.

British Columbia has not been immune from the scourge of racism. Early provincial laws prohibited "Chinamen" from working underground in mines and denied the right to vote to "Chinamen, Japanese and Indians." These restrictions on voting were not removed until the late 1940s. When these laws were challenged, the courts decided that race discrimination was not grounds for finding the laws invalid.

In 1876, reacting to an increasing Chinese population, the provincial legislature passed a resolution that "it is expedient to take some steps . . . to prevent this Province being overrun with a Chinese population to the injury of the settled population of the country". Two years later, the legislature made it illegal for any Chinese person to be employed on public works.

In the following decades, further discriminatory legislation was passed restricting Chinese and later Japanese immigration. In 1909, the Canadian government required that all immigrants to Canada reach our shores after a single continuous journey — an impossible task. In 1914 a ship arrived in Vancouver with several hundred Sikhs. The Sikhs were not permitted to disembark and after several months returned to India.

Persons who were not eligible to vote because of their race were also precluded from jury service, selling liquor, and the practices of law or pharmacy.

After the horrors of Nazi race supremacy during World War II, the newly formed United Nations promulgated the principles of racial tolerance and understanding. Barriers which had divided nations and communities were torn down and mutual respect was extended. An obvious sign of this change in B.C. was the introduction of human rights legislation in 1969.

Legislation and policy pronouncements are never enough to combat racism, but they are a start. In the early 1980s, the Ku Klux Klan began to organize followers in the lower mainland area. As a result of a report prepared by lawyer John McAlpine, the provincial government enacted the *Civil Rights Protection Act*.

The *Act* provides that a person who engages in a prohibited act commits an offence and is liable to a fine of up to $2,000 or to imprisonment for up to 6 months.

> . . . "prohibited act" means any conduct or communication by a person that has as its purpose interference with the civil rights of a person or class of persons by promoting
> (a) hatred or contempt of a person or class of persons, or
> (b) the superiority or inferiority of a person or class of persons in comparison with another or others,
> on the basis of colour, race, religion, ethnic origin or place of origin.

The activities of white supremacists have also been scrutinized by human rights tribunals. In the case of *Nealy* v. *Johnston*, (1989) 10 C.H.R.R. D/6450, a federal tribunal found that members of the Church of Jesus Christ Christian - Aryan Nations violated section 13 (1), the "hate literature" section, of the *Canadian Human Rights Act* when they communicated telephone messages which were, amongst

other things, virulently anti-Semitic. (The "Aryan Nations", as the group is commonly known, believes that Aryans are God's chosen people and the Jewish people are controlling the world through an international conspiracy. They also strongly advocate a separate nation for "white" persons.)

The messages which the Church communicated between 1986 and 1988 through a telephone number advertised in the personal columns of the Red Deer Advocate in Alberta concerned immigrants from third world countries, in particular Sikh, Tamil, and Vietnamese immigrants. These immigrants, the messages stated, should be sent back where they came from or, at least, segregated from the white population because they endanger the way of life of "pure-blooded" whites. Jewish people were characterized as clever, dangerous, amoral vermin conspiring to take control of the world.

The Tribunal also considered the application of the *Charter of Rights and Freedoms* to "the hate literature section" of the *Canadian Human Rights Act*. The Tribunal found that this section does violate section 2 (b) of the Charter because it is a curtailment of freedom of expression, and not a trivial or inconsequential curtailment. However, the Tribunal also found that it is a reasonable limit on the freedom of expression within the meaning of section 1 because of the importance of protecting identifiable groups from exposure to hatred and contempt.

Racism is by no means limited to these isolated and extremist groups. Recent news reports have described the defacing of synagogues, the sale of "Who's the Minority" pins and t-shirts, the backlash created after the R.C.M.P. agreed to let Sikh officers wear their turbans, and the desecration of Jewish cemeteries in Montreal.

Public education is one of the more effective tools to eradicate discriminatory attitudes. If school age children can become aware of racism and why it cannot be tolerated, they will be able to develop into mature and responsible individuals who will themselves be concerned with the eradication of racism. The Council has taken some steps in this direction with its school program but more must be done by the Council and other organizations.

Another positive approach is Affirmative Action or Employment Equity programs. What is meant by these terms is the adoption of practices designed to eliminate discriminatory barriers and to provide in a meaningful way equitable opportunities to members of visible minorities. These programs are specifically allowed and approved in B.C. by the Human Rights Council. For more information on these programs, see Part III of this Annual Report.

The 1984 Royal Commission Report on "Equality in Employment" noted the problems faced by Aboriginal persons and visible minorities in the workplace.

> For native people, equality in employment means effective and relevant education and training, accommodation to cultural and geographic realities, a primary voice in the design of the education, training, and funding programs established for their benefit, meaningful support systems, and the delivery of services through native-run institutions.
>
> For visible minorities, we must begin with an attack on racism, which though sometimes inadvertent is nevertheless pervasive. For immigrants, there is a need for adequate language training, for some mechanism to fairly assess the qualifications of those with non-Canadian experience or education, and for a program of information and counselling to teach and assist them to adjust to Canadian culture. Wherever reasonably possible, cultural and religious differences of minorities should be accommodated and they should be encouraged to integrate though not required to assimilate. (pages 4-5)

In B.C. the *Human Rights Act* provides redress for those individuals in the province who have been victims of discrimination. On finding that an individual has been discriminated against on the basis of race, colour, ancestry, or place of origin, the Council will order that the contravention cease. As well, the Council may order payment to the victim of up to $2,000 as compensation for the humiliation suffered and may order lost wages if the discrimination occurs in the workplace as a result of racist attitudes. When discrimination occurs in the workplace, the defendant to the action is not the individual who was the perpetrator but rather the company itself. In this way the company will be sure to guard against such behaviour recurring in the future.

Decisions of the Human Rights Council serve as a warning to all those who tolerate or promote racist attitudes. The following three cases effectively relate how human rights legislation protects an individual from racism within B.C.

Race, colour, ancestry and place of origin decisions by the B.C. Council of Human Rights:

Gajecki *v.* Board of School Trustees, School District No. 36

Chairperson of the Hearing: Eric D. Powell

Date of the Decision: October 17, 1989

Member Designate Eric D. Powell found that the Respondent discriminated against Mirek Gajecki with respect to a condition of employment because of his ancestry and/or place of origin.

Gajecki emigrated from Poland in 1970 and had been employed as a substitute teacher with the Respondent since June of 1984. While substituting, Gajecki applied for a permanent position and alleged that he was not given the position because of his accent.

Gajecki inquired about permanent full-time teaching positions on September 5, 1986. By September 15, 1986, Gajecki had not received any substitute teaching assignments. An investigation found it was because a note on his record indicated that he could not speak English. Immediately after this, the note was removed and Gajecki began substituting every day in that year. In that year, the School Board stated that Gajecki was considered for every permanent position for which he was qualified and his overall performance was the reason for the decision not to appoint him to a permanent position.

Powell found that Gajecki's accent was not a factor in the Respondent's decision not to hire him in a permanent position. However, Powell found that the Respondent discriminated against Gajecki with respect to a condition of employment by limiting him from substitute teaching for a few days because of a misunderstanding that his accent impaired his ability to speak English. Powell awarded the amount of $630 as compensation for loss of wages and the amount of $2,000 as some compensation for the hurt, indignity and embarrassment caused to him by the contravention.

Helen and Jacques Bronsard *v.* The Royal Canadian Legion, Branch #198

Chairperson of the Hearing: John I. D. Joe

Date of the Decision: August 4, 1989

Helen and Jacques Bronsard were discriminated against with respect to the terms and/or conditions of employment because of their ancestry and/or place of origin. The Bronsards claimed that their Francophone background as well as Jacques's criminal record were factors in the loss of their jobs. John Joe found that the Royal Canadian Legion, #198, was responsible for the discriminatory treatment of the Bronsards because of their race and ancestry. Joe did not find sufficient evidence to support Mr. Bronsard's allegation of discrimination on the basis of his criminal record.

Helen and Jacques Bronsard are Francophones born in Quebec who moved to Alert Bay, B.C. and worked for the Legion. The Legion hired Mrs. Bronsard as a bar/steward and Mr. Bronsard as a cleaner/janitor. At the employees' request, the relationship was changed so that Mrs. Bronsard was thereafter paid for both jobs even though Mr. Bronsard apparently continued to perform the cleaner/janitor duties. During their employment with the Legion, a series of disputes and confrontations took place which involved the Bronsards, several Legion members and members of the Legion Executive. The Bronsards alleged that they were subjected to ethnic slurs and insults because of their Francophone ancestry. Mr. Bronsard openly retaliated during these confrontations with abusive language and intimidation measures of his own. Despite measures taken by the Legion to deal with these problems, Mrs. Bronsard gave notice of her termination. The notice was served by her husband and he subsequently applied for the job, but was unsuccessful.

Joe found that the Bronsards had received discriminatory treatment during their employment with the Legion. In his award for lost wages, Joe recognized that Helen Bronsard had made travel plans immediately following her resignation, which disallowed any claim. As Jacques was not receiving a pay cheque, he could not claim wages. Joe awarded Helen Bronsard $2,000 as compensation for the humiliation suffered as a result of the discriminatory behaviour of the Legion. Joe recognized that Jacques Bronsard was a participant in the confrontations, and consequently awarded him $500.

Baichu *v.* Devron Hercules Manufacturing Ltd.*

Chairperson of the Hearing: Eric D. Powell

Date of the Decision: November 22, 1989

Eric D. Powell found that Tony Baichu had been discriminated against by Devron Hercules Manufacturing Ltd. with respect to terms and/or conditions of employment and was refused continued employment because of his race, colour, ancestry and/or place of origin.

Baichu testified that during his employment, he was the subject of racial slurs and jokes made by his fellow employees. He recounted incidents where he was referred

to as "black monkey boy" or "jungle bunny" as well as having to endure demonstrations of "the way we treat people . . . before they abolished slavery". Baichu testified as to the effect this treatment had on him by stating he felt "shaken up" and "very insulted". Baichu received a lay-off notice which included a statement that when the "workload improves" consideration would be given for re-employment. Though conditions did improve at Devron Hercules, Baichu did not receive any offers for re-employment from the Respondent.

A representative of Devron Hercules testified that insulting epithets and taunts were common in the workplace but he considered them only to be "in jest". He stated that Baichu had become "disinterested in his work" and that he was not considered for re-employment because "there's a lot of feelings . . . that . . . would be hard to overcome".

Powell ordered Devron Hercules to pay the sum of $25,240 as compensation for loss of wages and expenses incurred as a result of the contravention, $2,000 as some compensation for injury to feelings and self-respect caused by the contravention, and to rehire Baichu at the first opportunity available in a position for which he is qualified.

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* This matter was subsequently appealed by Devron Hercules and Mr. Powell's decision was upheld by the B.C. Supreme Court.

APPENDICES

Appendix A — Settlements

At any time during the complaint procedure, a Complainant and a Respondent may choose to settle the complaint. During this reporting period, 174 cases were discontinued following investigation, of which 112 were settled between the parties. A further 30 cases were resolved at or prior to a hearing. Some examples of settlement agreements are briefly described below.

Three women were offended by crude sexist posters put up in the workplace and subsequently filed a complaint with the Council. Their complaints were withdrawn when the three woman approached the employer who agreed to take the posters down.

A man who is confined to a wheelchair filed a complaint against the City of Vancouver Board of Parks and Recreation concerning the lack of accessibility to facilities in Queen Elizabeth Park. An informal meeting with a representative of the City led to more signs indicating accessible areas in the park.

A woman filed a sexual harassment complaint against a co-worker. The owner of the business phoned the Council to discuss the best means to resolve the matter. The owner decided that the harasser would be suspended without pay for two weeks with a warning of termination if the behaviour was repeated.

A man of Chinese ancestry alleged he was discriminated against by his employer with respect to the terms and/or conditions of his employment when he was refused a promotion. In settlement, the company paid him two months wages in the amount of $3,300.

A man who has a pronounced limp and a speech disability alleged that he was harassed by store personnel who believed he was drunk. After negotiations conducted by an Industrial Relations Officer, the parties settled on a payment of $2,000 in compensation.

A man, aged 64, wished to continue working past age 65. He took steps early on to have approval granted before he turned age 65. Unfortunately, approval was not granted in time and the man was mandatorily retired. An Industrial Relations Officer helped to negotiate the sum of $10,600 which represented the lost wages for what he would have earned had he continued to work.

A man filed a complaint with the Council alleging that he had been terminated because of his use of methadone, a drug used in the treatment of recovering heroin addicts. The Council accepts complaints of physical and/or mental disability discrimination from persons who are treated differently because they are rehabilitated alcoholics or substance abusers. Settlement was achieved when the employee received $1,960 as some compensation.

A woman with a group of mentally disabled adults was stopped at a gas station at which time the Manager allegedly referred to her companions as the "funny farm". As a settlement, the woman indicated that she would be satisfied with a letter of apology which was subsequently sent.

A woman who alleged she was sexually harassed at her work place was forced to resign because of the conduct of a male co-worker. As settlement of her complaint, the woman received $10,800 in lost wages, $1,000 compensation for general damages and re-instatement in a position comparable to her previous position at a different branch of the employer.

A woman of Aboriginal ancestry alleged she was discriminated against in a Vancouver laundromat when she was refused admittance. In settlement, the woman received a public apology which was published in a local newspaper and $500 as general damages in a settlement.

A group of Seventh Day Adventists worked at a sawmill which accommodated their religion by not requiring them to work on their Sabbath (sundown Friday until sundown Saturday). When the business changed hands, the employees were told they would have to work on their religious Sabbath. The parties settled when the new owners paid $2,000 to each of the Complainants for general damages.

Appendix B — Significant Decisions

(a) Council Decisions

SEX

Cook *v.* The T. Eaton Company

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: June 30, 1989

Section of the Act: Employment (section 8)

Cook, a 20 year employee of Eaton's, alleged that she encountered sex discrimination in employment opportunities as a commissioned salesperson in the appliance and furniture departments. The allegations of sex discrimination included: 1) verbal harassment by male co-workers which limited her success as a commissioned salesperson, 2) restriction to selling only small appliances, and 3) a denial of a commissioned salesperson position in the appliance and furniture department of Eaton's Nootka Warehouse Store. Cook also alleged that there was a systemic barrier to women becoming commissioned salespersons at Eaton's.

Eaton's acknowledged that Cook was treated differently from other employees but contended that the differential treatment was not based upon her sex, but rather, was an effort on their part to accommodate a "long term, but difficult, employee". Several of Eaton's managers or former managers stated that Eaton's would like to see more women in commissioned sales. It was, however, "difficult" to encourage women to go into this area of sales.

Wilson found Cook's complaint to be justified and noted that, while Eaton's may recognize the need for more women to be employed in the commissioned sales areas, evidence presented at the hearing indicated that, other than posting notices of vacancies, no other measures were taken to recruit women as commissioned salespersons.

Eaton's was ordered to appoint Cook to the first vacant position as a commissioned salesperson in the appliance department of the Nootka Warehouse Store. Wilson also ordered Eaton's to pay to Cook $2,000 for the embarrassment, injury to feelings and loss of dignity which she suffered as a result of the contravention.

Powell *v.* Mission Auto Wrecking Ltd.

Chairperson of the Hearing: Eric D. Powell

Date of Decision: July 27, 1989

Section of the Act: Employment (sections 7, 8)

Complainant Powell alleged that she was paid at a rate of pay that was less than a male employee for work that was similar or substantially similar and, further, that she was discriminated against with respect to terms and/or conditions of employment because of her sex.

In June 1986, the Complainant commenced employment with the Respondent as an auto repair journeyman at the rate of $7.50 an hour. Her duties primarily consisted of mixing paint, grinding rust, welding, vehicle preparation, and body work completion. In October of 1987, a male who was a second year apprentice was hired at the rate of $9.00 per hour. The Complainant and the second year apprentice performed essentially the same duties. The second year apprentice worked at the Respondent for a few months, then left on his own accord. A pay increase of $1.00 per hour was given to the Complainant in March of 1988 and shortly thereafter, she received an additional $.50 per hour increase. She continued to earn $9.00 per hour until she terminated her employment in December, 1988.

Evidence given at the Hearing indicated that both employees had been recommended for hire by their former employers. The decision to pay the second year apprentice $9.00 per hour was based on his references. The Company stated that the Complainant was not capable of performing advanced work in the shop, that there had been several complaints regarding the quality of her work and that she had been late for work on numerous occasions. However, it was acknowledged that the Complainant would be rehired in preference to the second year apprentice as he was "inclined to be lazy and his attendance was poor".

The Chairperson of the hearing, Eric D. Powell, found that there was insufficient evidence to make a finding of discrimination in wages under section 7. However, he noted that the impugned conduct was consistent with the allegation of sex discrimination pursuant to section 8 of the *Act*, and as such, found that the Complainant was discriminated against with respect to her conditions of employment in terms of her wages because of her sex. The Company was ordered to pay to the Complainant $1,200 which represents the difference in rates of pay in the relevant time periods. The Company was also ordered to pay to the Complainant $2,000 for the hurt and humiliation caused by the contravention.

SEX (SEXUAL HARASSMENT)

Haight *v.* W.W.G. Management Inc., doing business as "3rd Avenue Flowers"*

Chairperson of the Hearing: Helen Hughes

Date of Decision: September 19, 1989

Section of the Act: Employment (section 8)

Haight was employed as a floral designer at 3rd Avenue Flowers in Kamloops from November 1987 to April 1988. Testimony at the hearing indicated that Wilf Tantrum, owner of the Respondent, would often subject the staff to degrading and vulgar comments, coupled with offensive references which were derogatory to women. Haight further alleged that, on one occasion in February of 1988, Tantrum made a physical advance by "grabbing" her in the groin area. Haight said she

* Tantrum filed a Writ of Summons and Statement of Claim alleging that Haight maliciously and without reasonable cause laid a complaint of sexual harassment with the Council. Section 20 of the *Human Rights Act* states that "No person shall . . . intimidate . . . or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act". Haight has filed a Section 20 complaint against Tantrum.

screamed at Tantrum and immediately advised the shop manager, Joan Shannon, of the incident. Shannon told Tantrum to "keep his hands off her staff". At this point, Tantrum laughed and left the shop.

Tantrum acknowledged that he "may have" referred to his female staff in a sexually derogatory way, but it was "strictly in a joking manner". In regard to the incident of touching Haight, Tantrum denied this allegation noting that he was not in the shop at the time.

Hearing Chairperson Hughes cited several inconsistencies and contradictions in the testimonies of Tantrum and the witnesses called on his behalf and expressed concern over the divergence of testimony about the incident of alleged physical contact between Haight and Tantrum. After considering all of the evidence presented at the hearing, Hughes was satisfied that the incident occurred as alleged by Haight. Hughes found that both the physical act and the ongoing objectionable environment created by Tantrum's vulgar and obscene language constituted sex (sexual harassment) discrimination.

Accordingly, the complaint was found to be justified and Tantrum's company was ordered to pay to Haight $6,720 as compensation for loss of wages as a result of the contravention and an additional $2,000 as some compensation for the humiliation, indignity and injury.

Dyson *v.* Louie Pasin Plaster & Stucco Ltd., doing business as "The Pass Motor Inn"

Chairperson of the Hearing: John I. D. Joe

Date of Decision: March 5, 1990

Section of the Act: Employment (section 8)

The Hearing Chairperson, John Joe, found the complaint of sex (sexual harassment) discrimination as alleged by Francis Dyson to be justified. Joe noted that there was little dispute over the events; however the question to be determined in this case was whether or not the conduct was "consensual".

The Complainant commenced employment at "The Pass Motor Inn" in Penticton on May 25, 1987, and stated she enjoyed a "friendly, relaxed relationship" with her supervisor, Louie Pasin. However, that relationship changed as a direct result of an incident which occurred on June 15, 1987. The events which occurred on that date led to a physical assault on the Complainant.

The Complainant was extremely distressed by the incident and stated she felt she had no choice in the matter. She was not scheduled to work on June 16th and, although "extremely nervous", completed her shift on June 17th; however, on June 22nd, she "couldn't stand the stress" and terminated her employment. Pasin was out of town on June 22nd and was unaware of her termination until June 23rd when he telephoned her to have her return to work. It was during this conversation that the Complainant advised Pasin that she had been to the police and had also filed a human rights complaint over the incident on June 15.

The testimony of Pasin regarding the incident of June 15th contradicted that of the Complainant. His recollection of the events was that following dinner, to a certain extent, the Complainant initiated the incident.

Several factors were considered by Joe in his determination of the question of consent, including Pasin's testimony regarding his conviction as a result of the criminal proceedings. Joe found that the Complainant's participation in the events of June 15th was not consensual and the "unwelcome conduct of a sexual nature" detrimentally affected the Complainant's work environment. Accordingly, the Respondent was ordered to pay to the Complainant $1,000 as some compensation for her loss of wages and in addition, $2,000 as some compensation for the hurt and humiliation caused by the contravention.

CRIMINAL CONVICTION

Thompson *v.* Granny's Fried Chicken Limited

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: December 11, 1989

Section of the Act: Employment (section 8)

There was little dispute regarding the essential facts in this case. In 1984, when he was 20 years old, Thompson robbed a bank with a toy gun and was sentenced to three years in prison for robbery with the threat of violence. Thompson was released in July of 1986, and was then on parole until June 1987, and then held a variety of jobs.

On November 11, 1987, Thompson was hired for the position of short order cook at Granny's Terminal Park outlet. Thompson was not asked if he had a criminal record, nor did he volunteer this information. During his first week of employment, he was told he was doing a good job and was directed to report again for work on Tuesday, November 18th. On the evening of November 17th, he received a phone call from Neil Reinhardt, owner of the restaurant, and was told he was fired.

Reinhardt, the principal shareholder of the restaurant, testified that when he met Thompson at the end of his first week of employment, he felt Thompson was "wrong for the job" and "looked out of place". Reinhardt said he then went to the R.C.M.P. and was informed of the bank robbery conviction. Reinhardt said he did not contact any of Thompson's previous employers, but that he phoned Thompson "prior to November 18th" and told Thompson that his position as short order cook was terminated.

Patricia Rains, Executive Director of the John Howard Society, testified that Thompson's parole ended June 13, 1987, and that he had no breaches of his parole. She said that Thompson has had no convictions since 1984, had successfully completed an apprenticeship and was a steadily employed millwright, and that he was now married with one child.

Wilson noted that Reinhardt did not have sufficient knowledge or information to conclude that Thompson's convictions were related to his employment and that the evidence led by the Respondent did not indicate that Thompson's convictions were

related to the job of cutting and frying chicken. Wilson stated that Thompson had shown a firm intention to rehabilitate himself and there was no indication that he would repeat the behaviour.

Wilson found the complaint to be justified and the restaurant was ordered to pay to Thompson $1,500 as some compensation for the humiliation, embarrassment and injury to feelings of self-respect caused by the contravention.

AGE

Perrett *v.* Versa Services, a Division of VS Services Limited

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: February 13, 1990

Section of the Act: Employment (section 8)

Parrett worked as a janitor and maintenance person at the Nanaimo Travellers' Lodge Society, which is a contract customer of Versa Services. In May of 1987, he received a letter from Versa Services' Vice-President which congratulated him on his forthcoming retirement and advised that it was the Versa Services policy to "allow employees to retire no later than their 65th birthday". Perrett requested a one year extension. Versa Services did not grant this request, however, Perrett was allowed to continue working until the end of August.

Although Versa Services contended that its action of insisting that Perrett retire at age 65 was a "kinder and gentler" method of terminating an employee who was not performing his duties to the satisfaction of their client, the testimony at the hearing indicated that the Chief Administrator of the Lodge was the only person dissatisfied with Perrett's job performance. Evidence presented indicated that Perrett had performed his job duties satisfactorily and had "a wonderful rapport with the Lodge residents". The testimony also confirmed that Versa Services did not have a *bona fide* retirement plan in place when Perrett was notified that it was company policy to retire at 65.

Wilson found that Versa Services discriminated against Richard Perrett when his employment was terminated when he reached age 65. Versa Services was ordered to pay to Perrett $6,500 as some compensation for loss of wages and an additional $2,000 for the humiliation, embarrassment, and injury to feelings of self-respect caused by the contravention.

Matheis *v.* Nanaimo Bakery & Patisserie, doing business as "G & M Bakery"

Chairperson of the Hearing: Eric D. Powell

Date of Decision: December 8, 1989

Section of the Act: Employment (section 8)

Deana Matheis, who was 25 years old at the relevant time, had been employed at the bakery on a 30-hour work week since August of 1987. The bakery was sold in

January of 1988 and Thomas Jaeger assumed the role of manager. In April, a woman described as being in her "mid-fifties" was hired for full-time work in the serving area; at the same time, Matheis was notified that her hours were reduced to 20 hours per week. When Matheis asked Jaeger why she had not been given the opportunity to apply for the full-time position, Jaeger stated he believed that an "older woman could learn more and be a faster worker".

Matheis terminated her employment on April 8, 1988, because her hours had been reduced and because she believed Jaeger had discriminated against her because of her age.

Jaeger appeared at the hearing on behalf of the bakery and acknowledged he told Matheis that her hours had been reduced because he had hired a full-time person who was "older and could learn and work faster". He stated that he required a full-time person who would dress appropriately, be friendly, was experienced and mature to work in the bakery sales area and that he believed that Matheis did not possess these qualities.

Powell was satisfied that Matheis' age was a significant factor in the denial of an opportunity to compete for the full-time position in the bakery and subsequent reduction of her hours. Powell noted that, in this case, it had not been established that being "older" was a *bona fide* occupational requirement, but rather an impression or preference held by Jaeger.

Powell found the complaint of age discrimination to be justified and the bakery was ordered pay to Matheis $2,000 as some compensation for the hurt and humiliation caused by the contravention.

RACE, COLOUR, ANCESTRY AND PLACE OF ORIGIN

Makkar *v.* Dr. Mohamed Munawar Sabir

Chairperson of the Hearing: John I. D. Joe

Date of Decision: November 1, 1989

Section of the Act: Public Facilities (section 3)

Jasbir Makkar, an East Indian Sikh, alleged that, on two occasions, his physician, Dr. Mohamed Munawar Sabir, directed derogatory statements toward him because of his religion, race, colour, ancestry or place of origin. Sabir, however, denied any discriminatory comments toward Makkar and contended the proceedings arose because of a disagreement regarding Makkar's medical condition, particularly with respect to his claim to the Workers' Compensation Board.

Makkar was injured at work in July 1986, and because of continued pain, he was referred to Sabir in September. During his first consultation, which was also attended by his wife, Makkar said Sabir commented that there was a "problem with the Sikh community, they don't want to work, they want to stay on compensation". According to Makkar, the second incident of derogatory comments occurred on his third office visit to Sabir. Makkar was accompanied by his mother during this visit and it was alleged that Sabir again made comments directed at the Sikh community. Makkar stated Sabir seemed "angry" and that an argument erupted when Sabir gave his opinion that Makkar was able to return to work in a light job to begin with and gradually increase his activities.

Sabir acknowledged that, during Makkar's third visit to his office, a heated discussion arose concerning who would be "responsible" if Makkar went back to work and incurred further injury; however, any comments made during this discussion were not of a discriminatory nature.

In rendering his decision, Joe stated he was not satisfied that the evidence established that Makkar's religion, race, colour, ancestry or place of origin were significant factors in Sabir's treatment of Makkar. Accordingly, Joe ordered the complaint to be dismissed as unjustified.

PHYSICAL AND MENTAL DISABILITY

De Jong *v.* Horlacher Holdings Ltd., doing business as "Family Tree Restaurant"

Chairperson of the Hearing: Lorna R. Barr

Date of Decision: May 12, 1989

Section of the Act: Employment (section 8)

De Jong, who suffers from severe acne, was employed as a waitress at the Family Tree Restaurant in Campbell River from February 1987 to June 1987. Anton Horlacher, owner of the Respondent, spoke with De Jong and told her that complaints regarding her appearance had been received from employees and customers. He stated that although he would prefer to let her go, he would compromise as she did not have enough weeks to qualify for unemployment insurance benefits. Therefore, he intended to change the terms and conditions of her employment by either reducing her hours or by moving her to a position out of public view. De Jong was "upset", "shocked", and "humiliated" by these suggestions.

On June 10th, De Jong referred to Jytte Horlacher as a "snooty old biddy" and that comment was overhead by a co-worker. The following day when De Jong reported for work, she was given her separation slip.

Horlacher agreed that De Jong's skin condition was a concern to him as there had been numerous remarks and complaints made by staff and customers to his wife, Jytte Horlacher, regarding De Jong's appearance; however, his wife terminated De Jong because of a remark made about her by De Jong.

One of the issues addressed by Barr was whether or not acne constitutes a physical disability under the *Human Rights Act*. Barr considered certain principles enunciated in human rights law which identify physical disability as sharing the characteristic of other protected classes in that the persons affected are unable to do anything of their own volition to remove themselves from that category and, further, that as there are no specific guidelines or definitions of physical disability, each case must be determined on its own merits. De Jong had been afflicted with the disease for a number of years and treatment to control the condition had been unsuccessful. Barr also noted it was the effect of the action complained of which is significant in the assessment of discriminatory conduct.

Barr found that, in the circumstances of this case, De Jong's acne constituted a physical disability. In making this determination, Barr noted the evidence showed that De Jong's skin condition was a concern to the Horlachers as a result of the customer and employee complaints.

Barr found that while the remark made by De Jong may have contributed to the decision to terminate her, the significant factor was the comments and complaints received regarding De Jong's physical disability. Accordingly, the complaint was found to be justified and the restaurant was ordered to pay to De Jong $1,500 as some compensation for the hurt and humiliation experienced as a result of the contravention.

Hamlyn *v.* Cominco Ltd.

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: December 8, 1989

Section of the Act: Employment (section 8)

Robert Hamlyn alleged that Cominco refused to rehire him after a lay-off because of a physical disability. In this case, Hamlyn alleged that he was perceived to be disabled because of his weight.

Cominco refuted the allegations by stating that size and weight, sometimes referred to as obesity, was not a disability and, therefore, was not covered by the *Human Rights Act*. Alternatively, Cominco contended that, if obesity was covered by the Act, the decision not to re-employ Hamlyn was justified because of a *bona fide* occupational requirement (b.f.o.r.) that he be able to enter small vessels and other confined areas, which they contended he could not do.

Hamlyn, whose usual working weight was 327 pounds, was employed by Cominco from 1979 to 1986. His testimony, which was supported by several of his previous foremen and co-workers, was that during his employment with Cominco he was able to perform all of the assigned duties. His contention that he was at least an average to above average worker was supported by his positive work evaluations which referred to him as a "good reliable worker". At the time of his lay-off, Hamlyn's evaluation indicated a recommendation for rehire.

Following his lay-off, Hamlyn remained in contact with Cominco as he had been advised that he would "experience no difficulty in being rehired". In late December of 1986, he was informed by a person in the Employee Relations Department that he would be re-employed in early January. When he met with the general foreman in December to discuss re-employment, Hamlyn acknowledged that he was "20 to 25 pounds heavier than the usual weight".

At the hearing, the general foreman acknowledged that he was of the impression that, because of Hamlyn's size, he would be "unable to fit into the vessels safely". When the opportunity arose for possible rehire in March of 1987, the general foreman maintained his perception of Hamlyn from December and refused to hire him.

It was noted that, until the time of the hearing, Cominco had not undertaken any efforts to establish guidelines on size and weight as a b.f.o.r. In particular, Cominco contended that Hamlyn's size and weight in relation to various vessels, scaffolding,

roofs and other areas were a "safety concern"; however, an examination of the safety standards of such equipment was not done until just prior to the hearing. As well, Cominco argued that one of the requirements is that a person have a girth of "no more than 50 inches"; however, the uncontradicted testimony was that this requirement was not in place at the time of Hamlyn's refusal for employment. Wilson stated that Cominco would have no objective information to conclude that Hamlyn's girth was more than 50 inches as Hamlyn testified that "the only person who ever used a measuring tape on him was his tailor".

Wilson was satisfied that Hamlyn's size and weight were perceived by Cominco as a physical disability and that Cominco failed to establish a b.f.o.r. on the basis of size and weight. Wilson, therefore, found that Hamlyn's size and weight constitute a perceived disability and that Cominco discriminated against Hamlyn by refusing to employ him because of a physical disability.

Wilson, in rendering his decision, stated he was satisfied that, had the discrimination not occurred, there was a reasonable possibility that Hamlyn would have been employed with Cominco.

Cominco was ordered to return Hamlyn to the job of plant service worker within 60 days of the date of this decision and commencing on the date of his re-employment, award Hamlyn seniority rights dating back to March 5, 1987. Cominco was also ordered to pay to Hamlyn $65,000 as some compensation for loss of wages and an additional $2,000 for the humiliation, embarrassment and injury to his feelings of self-respect and dignity.

O'Leary *v.* Pacific Motors Sales & Service Limited doing business as "Pacific Mazda"

Chairperson of the Hearing: Helen Hughes

Date of Decision: April 6, 1990

Section of the Act: Employment (section 8)

Arthur O'Leary, who was in his early fifties at the time relevant to this complaint, commenced employment with the Respondent in December of 1987 and was terminated on August 15, 1988. He had experienced a series of heart attacks and, consequently, underwent by-pass surgery in 1982. He did not have another heart attack until 1987 after he "forgot to take his medication". O'Leary stated he had returned to a normal lifestyle with no restrictions prior to applying for employment with Pacific Mazda. Therefore, he did not indicate his previous medical history when he was hired.

O'Leary's main responsibility was to maintain the vehicle inventory on the new and used car lots. This involved washing, vacuuming, and driving cars. He stated that he enjoyed his job and there was no emotional or mental stress associated with it. He did not receive any negative comments about his work performance.

While at home after work on July 4, 1988, O'Leary felt chest pains and was subsequently hospitalized until July 11th for what was later diagnosed as a mild heart attack. O'Leary's wife called in to Pacific Mazda on July 5th to indicate that O'Leary was "ill". On July 8th, when the doctors indicated that he had suffered a mild heart attack, his wife then relayed that information to his employer. She was

told to tell O'Leary "not to worry about anything — just get better". He returned to work on August 15th upon the advice of his family doctor. When O'Leary got to work that day, he began doing his regular duties. At about 9:00 a.m., he was called into the General Sales Manager's office and was told he was terminated because the company "just couldn't take a chance" on his condition. Although he indicated that he had a letter from his doctor which stated he was able to return to work, the General Sales Manager "was not interested" in either the letter or the name of his doctor. O'Leary said he was "really shook" by the termination and felt "a little useless". He commenced employment with an auto supply company on October 15, 1988, and has been with the company since that date.

Pacific Mazda, in defence of its actions, maintained that O'Leary's termination was based on a *bona fide* occupational requirement (b.f.o.r.) as the work he performed was "arduous" and the General Sales Manager "from a personal standpoint" decided O'Leary was not suited to the job and, therefore, decided to terminate him.

In considering the b.f.o.r. argument put forth by Pacific Mazda, Hughes was not satisfied that it had undertaken sufficient investigation and evaluation regarding O'Leary's ability to perform the duties of his job before making the decision to terminate his employment. She stated, "An impression of perceived consequences that could flow from an employee's return to work is not sufficient to justify termination, particularly when these perceived consequences are not suggested by any medical opinion provided to the employer by the employee".

Pacific Mazda was ordered to pay to O'Leary $2,788 as compensation for his loss of income from August 15 to October 15, 1988 and pay an additional amount of $2,000 as some compensation for the loss of self-esteem, emotional injury and humiliation caused as a result of the contravention.

RELIGION

Boogaars *v.* Greater Victoria Hospital Society and the Hospital Employees' Union

Chairperson of the Hearing: Lorna R. Barr

Date of Decision: April 4, 1989

Section of the Act: Employment (section 8)

Lena Boogaars worked as a Licensed Practical Nurse at the Gorge Road Hospital from 1973 to 1986, the last three years of which she spent in the Rehabilitation unit on a permanent part-time basis. She worked 30 hours per week on a 4 day on/5 day off rotation which included at least two Saturdays a month. In February 1986, Boogaars became a member of the Worldwide Church of God, a religion which requires strict observance of the Sabbath from sundown Friday to sundown Saturday. She immediately informed the unit head nurse that she could no longer work on Saturdays.

For approximately seven months, the hospital accommodated her request. However, when shift scheduling difficulties arose which affected the unit's staff and patient care, Boogaars was advised she would be required to work Saturdays or, alternatively, pursue several options suggested by the hospital which did not

require work on Saturdays. On August 22, 1986, she gave notice of termination and on September 27, 1986, she left her employment with the hospital.

In rendering her decision, Barr noted that it has been well established that where the employer has taken steps to accommodate the employee but has not reached the desired objective, there is an onus on the employee to also take some accommodating measures. The hospital recognized the need to meet religious obligations and when conflicts arose, several options were offered to her as alternatives. Boogaars asked the union for advice and, although there was a discrepancy in the testimony at the hearing as to the nature of that conversation, Boogaars did not act upon any of the alternatives suggested.

Barr stated she was not satisfied that Boogaars made a sufficient effort to take some accommodating measure of her own and noted that she could have found an interim solution to her situation by placing herself on the casual list, by applying for temporary positions, or by combining these options at least until such time as she bid successfully into another position that met her requirements. Barr found the complaint against the hospital to be not justified and accordingly dismissed it.

In regard to the allegations against the Union, Barr noted that although the Union specifies the hours of work for regular full-time employees, the Union does not determine shift schedules. Therefore, it is not liable for any adverse effect discrimination which may result from those requirements. As well, Barr noted that Boogaars had already submitted her resignation prior to any contact with the Union. The complaint against the Union was also dismissed.

(b) Court Decisions

Under the *Judicial Review Procedure Act* any party may apply for a judicial review of a Council decision. The following are some significant court decisions that were handed down in this reporting year.

British Columbia Transit *v.* British Columbia Council of Human Rights and McCabe*

Presiding Judge: MacKinnon J. (B.C. Supreme Court)

Date of Decision: September 15, 1989

The purpose of this petition was to argue that the Council breached the rules of natural justice by denying the Appellant the right to a hearing when it made its decision pursuant to section 13 (1) (d) of the *Human Rights Act* which reads as follows:

13. (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint . . .

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

* This decision has been appealed by B.C. Transit.

The Council had accepted the complaint from McCabe against B.C. Transit even though it was based on facts that occurred more than 6 months before. B.C. Transit brought this petition claiming that this decision required a hearing.

MacKinnon, J. reviewed the intent of the legislature and found that a section 13 decision is a decision to be made by the Council. He stated that the statute does not require a hearing or notice to the parties where it decides to investigate. The reason for this is that the opportunity for a hearing will arise later on in the process. The appeal was therefore dismissed.

Onischak *v.* British Columbia Council of Human Rights and The Ministry of Attorney-General

Presiding Judge: Huddart J. (B.C. Supreme Court)

Date of Decision: May 17, 1989

This was an application to set aside an order of the British Columbia Council of Human Rights. The issue was whether the Council exercised its discretion according to the test set out in *Cook v. British Columbia Council of Human Rights* (1988), 26 B.C.L.R. (2d) 52 (B.C.S.C.) when it made its order pursuant to section 14 (1) (a) of the *Human Rights Act* discontinuing proceedings on Onischak's complaint. Onischak, who is legally blind, considered that the rejection of his application after a preliminary interview for employment with the Ministry of the Attorney-General as a probation officer was affected by his vision impairment. Accordingly, he filed a complaint with the Council alleging discrimination on the basis of a physical disability — blindness.

The test in *Cook* states that when considering whether or not to discontinue proceedings, the Council must determine whether there is any evidence upon which the Council "acting reasonably, could find the complaint to be proved on a balance of probabilities . . . Clearly the application of such a standard does not require or permit the council to weigh the evidence".

Huddart J. found that the Council applied the *Cook* test correctly and that the evidence was not weighed in the sense meant in *Cook*. Huddart J. went on to state:

> The facts alleged to give rise to an inference of discrimination can be seen objectively to be neutral. It cannot be said that they raise the presumption of discrimination in the absence of an explanation, unless the mere fact of physical disability or having made a previous complaint on similar grounds gives rise to such a presumption. The petitioner's case remains in the realm of conjecture.

Huddart J. concluded that Onischak did not meet the onus of presenting sufficient evidence to take the complaint of discrimination out of the realm of conjecture.

Alternatively, Onischak argued that the rules of natural justice were breached in that he was not given the opportunity to cross-examine the witnesses for the Ministry. Huddart J. stated that the decision in *Brouillette* v. *Canadian Human Rights Commission* (1986), [1988] 9 C.H.R.R. D/5317 should be followed in these circumstances: "The issues in each case remain, firstly, whether the process adopted really was deficient and if so, secondly, whether that resulted in a denial of natural justice". Huddart J. found no deficiency in the process adopted by the Council with regard to a denial of natural justice.

Huddart J. commented on the court's role in the supervision of a statutory tribunal and stated that:

> This Court will not interfere with a decision of a statutory tribunal acting within its jurisdiction unless that tribunal was acting in bad faith, taking into account extraneous matters, or failing to take account of relevant facts, or misinterpreting provisions of the enabling statute so as to embark on an inquiry or answer a question not remitted to it, in which case it will be found to have exceeded its jurisdiction by its patently unreasonable exercise of the discretion entrusted to it by the Legislature . . . The Legislature has entrusted the responsibility to deal with human rights to the Council . . . In these circumstances the only question is whether or not the Council acted patently unreasonably in exercising its discretion . . . What is patently unreasonable will depend on the circumstances of each case.

(c) Decisions with a National Impact

Brooks *v.* Canada Safeway Limited (1989) 10 C.H.R.R. D/6183

Date of Decision: May 4, 1989, Supreme Court of Canada

The Supreme Court unanimously ruled that Safeway's employee disability plan discriminated against pregnant employees and that discrimination on the basis of pregnancy constituted discrimination because of sex within the meaning of the *Manitoba Human Rights Act*.

The Safeway disability plan, which was challenged in the complaints of Susan Brooks, Patricia Allen and Patricia Dixon, provided 26 weeks of disability benefits to any worker who had worked for Safeway for three months and who had to be absent from work for health reasons. However, the plan denied benefits to pregnant employees during a seventeen-week period commencing ten weeks before the week of childbirth and extending to six weeks after it. During this time, pregnant employees who were unable to work, either because of pregnancy-related complications or non-pregnancy-related illness, were not eligible for benefits. UIC maternity benefits provided an imperfect substitute for the disability benefits because they required a longer work period for eligibility, and provided less money for a shorter time.

The Court found that pregnancy provides a perfectly legitimate health-related reason for not working and so it should be compensated under the Safeway plan. Not to compensate pregnant employees for legitimate health-related absences goes against the purpose of human rights legislation which is to remove unfair disadvantages suffered by groups. Though society in general benefits from procreation, the Safeway plan places the major costs of procreation entirely on one group — pregnant women — and imposes unfair disadvantages on them.

The second issue was whether discrimination because of pregnancy is discrimination because of sex. The Supreme Court repudiated their earlier decision in *Bliss* v. *Attorney General of Canada*, [1979] 1 S.C.R. 183 that only some women are affected by pregnancy-related discrimination and that does not mean that it is discrimination because of sex. Only women are affected by this form of discrimination and they are discriminated against because of their gender.

Janzen *v.* Platy Enterprises (1989) 10 C.H.R.R. D/6205

Date of Decision: May 4, 1989, Supreme Court of Canada

In a unanimous decision, the Supreme Court of Canada ruled that sexual harassment is sex discrimination, thereby overturning a decision of the Manitoba Court of Appeal which found that sexual harassment was not sex discrimination within the meaning of the *Manitoba Human Rights Act*.

Dianna Janzen and Tracy Govereau were employed as waitresses by Pharos Restaurant. The Board of Adjudication appointed to hear and decide their complaints found that they had been sexually harassed by Tommy Grammas, the cook in the restaurant, and that this constituted sex discrimination. The Board of Adjudication also found that Platy Enterprises Ltd., the owners of the restaurant, were liable for the discrimination and awarded compensation to the two women.

The Manitoba Court of Appeal allowed the appeal by Platy Enterprises, reasoning that because only some women are subjected to sexual harassment and not all, it is not discrimination because of sex but rather discrimination because of individual characteristics. The Court found that the cause of the discrimination was the physical attractiveness of the waitresses.

The Supreme Court ruled that the fact that only some women, and not all women are the victims of sexual harassment does not mean that the conduct is not sex discrimination. Gender need not be the sole ingredient in the discriminatory conduct for it to be sex discrimination; it can be one factor only. The Court found that the key fact in the case was that it was only female employees who ran the risk of being sexually harassed. The women were subject to a disadvantage because of being women; no male employee in these circumstances would have been subject to the same disadvantage.

Dickson C. J. C. stated his view on sexual harassment in the workplace as:

> . . . unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment . . . When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power.

Dickson C. J. C. also cited Professors Constance Backhouse's and Leah Cohen's *The Secret Oppression: Sexual Harassment of Working Women* (1978). The Professors listed a number of concrete illustrations of harassing behaviour:

> Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve verbal innuendo and inappropriate affectionate gestures. It can, however, escalate to extreme behaviour amounting to attempted rape and rape. Physically the recipient may be the victim of pinching, grabbing, hugging, patting, leering, brushing against, and touching. Psychological harassment can involve a relentless proposal of physical intimacy, beginning with subtle hints which may lead to overt requests for dates and sexual favours.

Saskatchewan (Human Rights Commission) *v.* Saskatoon and Moose Jaw (Cities) (1990) 11 C.H.R.R. D/204, 217

Date of Decision: December 21, 1989, Supreme Court of Canada

The reasons of the Supreme Court of Canada were the same in both cases. Both cases involved the mandatory retirement of firefighters, one aged 60 and the other age 62. In the circumstance of these two cases, the Court found that the mandatory retirement of the firefighters did not constitute discrimination on the basis of age.

The Saskatchewan Human Rights Code prohibits discrimination on the basis of age except where being of a certain age is a reasonable occupational requirement for a position. According to the test established by the Supreme Court of Canada in *Ontario (Human Rights Commission)* v. *Borough of Etobicoke*, [1982] 1 S.C.R. 202 there is both a subjective and an objective element to a *bona fide* occupational qualification (b.f.o.r.) defence. The b.f.o.r. is the same as the reasonable occupational requirement in the Saskatchewan legislation. An employer must show both that the qualification is imposed in good faith and that it is reasonably necessary to the performance of the job. The Supreme Court of Canada has also ruled in previous decisions that a *bona fide* occupational qualification applies to an occupation as a whole and individualized testing of employees to determine whether they could perform the duties of the position is not necessary.

While individualized testing is not a requirement, the Court stated that an employer may not satisfy the burden of proof of establishing the reasonableness of the requirement if s/he fails to address satisfactorily the question of why it is not possible to assess employees on an individual basis. The Court accepted the Board of Inquiry's finding of fact that individualized testing to determine whether firefighters who are 60 or over could perform the firefighting duties was not feasible.

Syndicat des employes de production du Quebec et de l'Acadie *v.* Canada (Canadian Human Rights Commission) (1990) 11 C.H.R.R. D/1

Date of Decision: October 12, 1989, Supreme Court of Canada

The Supreme Court of Canada upheld the decision of the Canadian Human Rights Commission to dismiss a complaint. The syndicat (Union) had filed a complaint alleging that female employees of the CBC in the section responsible for costumes and makeup were paid less for work of equal value than male employees in the section responsible for sets.

The issue in this case was whether the decision to dismiss a complaint was a judicial or quasi-judicial decision and therefore reviewable under section 28 of the *Federal Court Act*. The *Act* provides that decisions by boards, commissions, or tribunals can be reviewed by the Federal Court and set aside on the grounds that a principle of natural justice was not observed or an error of law or an erroneous finding of fact was made. This review is only available where it is a judicial or quasi-judicial decision and not an administrative one. The majority of the Court found that the decision to dismiss a complaint is administrative. The decisions are based on an assessment of whether there is a reasonable basis for proceeding to the next stage in the procedures. Therefore the Commission is not required to comply with the principles of natural justice.

It was not necessary to decide whether the Commission made a reviewable error. However, the majority found no denial of either natural justice or procedural fairness in this case. The complainant was informed of the substance of the evidence put before the Commission and was provided with an opportunity to respond to it. The Commission considered the investigator's report, other relevant

material, and the representations of the parties and then decided. The Commission was not required to provide reasons for its decision. Finally, the Commission correctly interpreted section 11 of the *Canadian Human Rights Act* and applied it in this case. Section 11 is designed to prohibit discrimination by an employer between male and female employees who perform work of equal value; it is not designed to guarantee individual employees equal pay for work of equal value irrespective of sex.

Appendix C — Statistics

April 1, 1989 – March 31, 1990

The following tables detail the nature of complaints received, the number of phone inquiries, intake activity, the disposition of complaints referred to hearing, and dispositions of complaints after section 11.

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Table 1 Incoming Telephone Calls — April 1, 1989 to March 31, 1990

Table 2 Human Rights Inquiries — April 1, 1989 to March 31, 1990

Table 3 Number of Intakes by Month — April 1, 1989 to March 31, 1990

Table 4 Disposition of Complaints Referred to Hearing — April 1, 1988/ March 31, 1989 — April 1, 1989/March 31, 1990

Table 5 Disposition After Investigation — April 1, 1988/March 31, 1989 — April 1, 1989/March 31, 1990

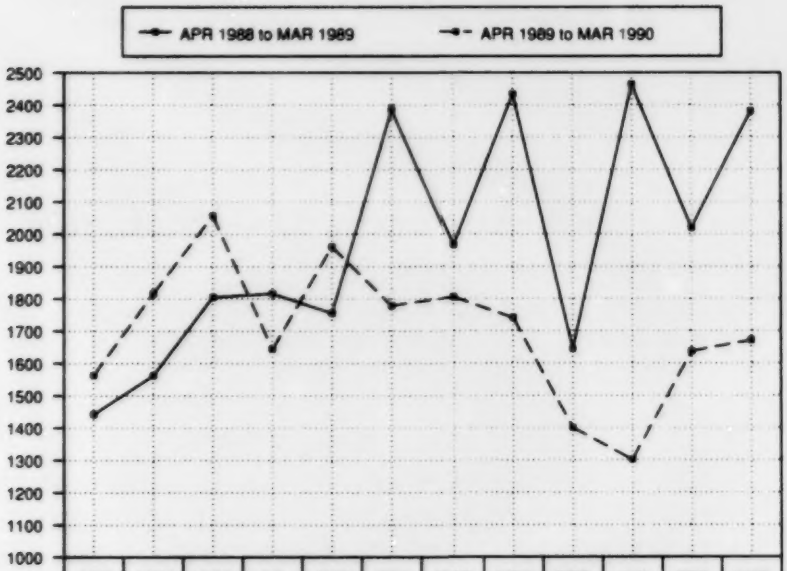
Table 6 Complaints by Section of the Act — April 1, 1989 to March 31, 1990

Table 7 Complaints by Prohibited Grounds — April 1, 1989 to March 31, 1990

TABLE 1

Incoming Telephone Calls

April 1, 1989 to March 31, 1990

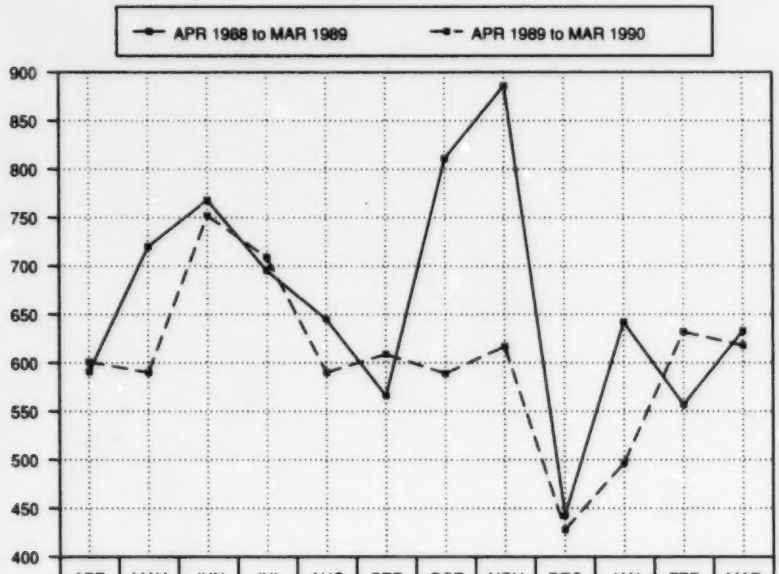


	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
APR 1988 to MAR 1989	1442	1562	1805	1816	1755	2385	1967	2434	1644	2464	2020	2381
APR 1989 to MAR 1990	1563	1816	2057	1644	1961	1779	1805	1740	1400	1301	1637	1671

TABLE 2

Human Rights Inquiries

April 1, 1989 to March 31, 1990

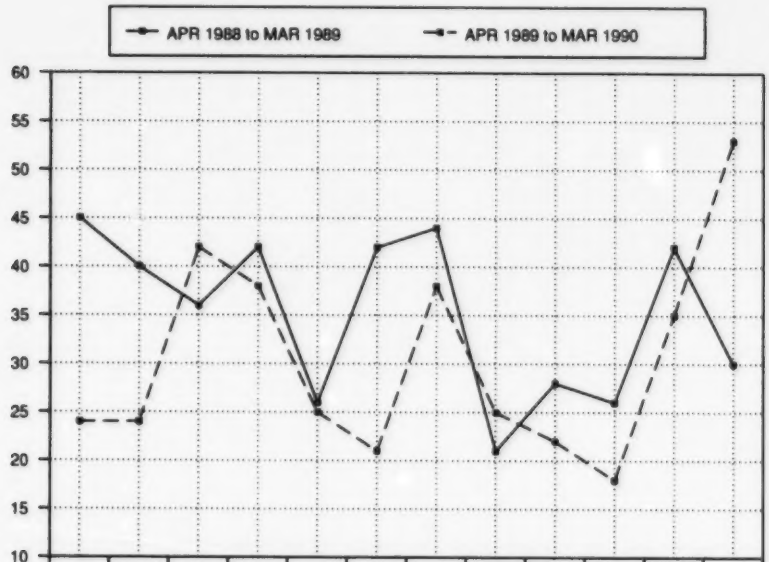


	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
APR 1988 to MAR 1989	591	720	768	695	645	566	811	886	443	642	557	633
APR 1989 to MAR 1990	601	590	752	709	590	609	589	617	428	497	632	618

TABLE 3

Number of Intakes by Month

April 1, 1989 to March 31, 1990



	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
APR 1988 to MAR 1989	45	40	36	42	26	42	44	21	28	26	42	30
APR 1989 to MAR 1990	24	24	42	38	25	21	38	25	22	18	35	53

TABLE 4

Disposition of Complaints Referred to Hearing

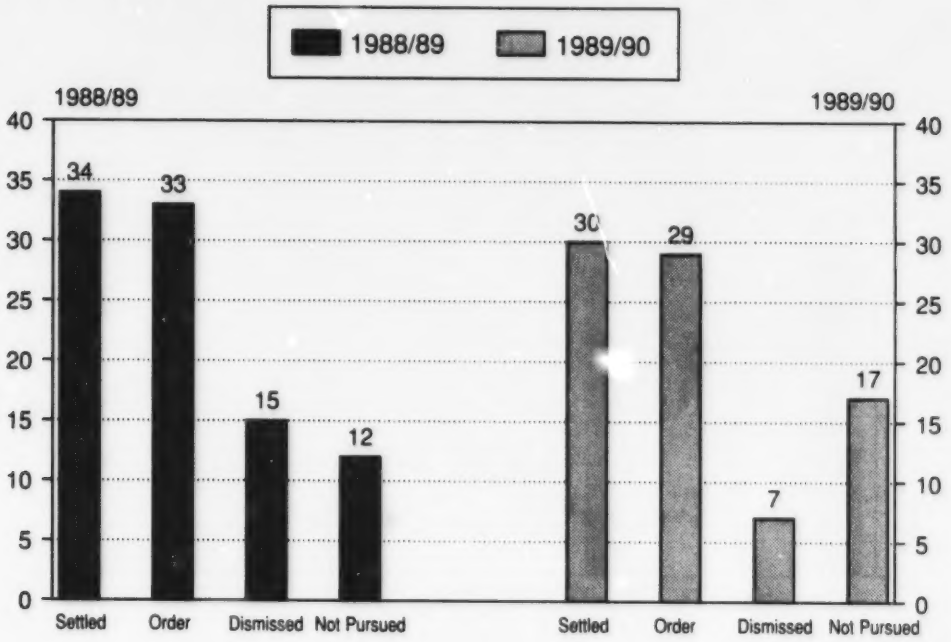


TABLE 5

Disposition After Investigation

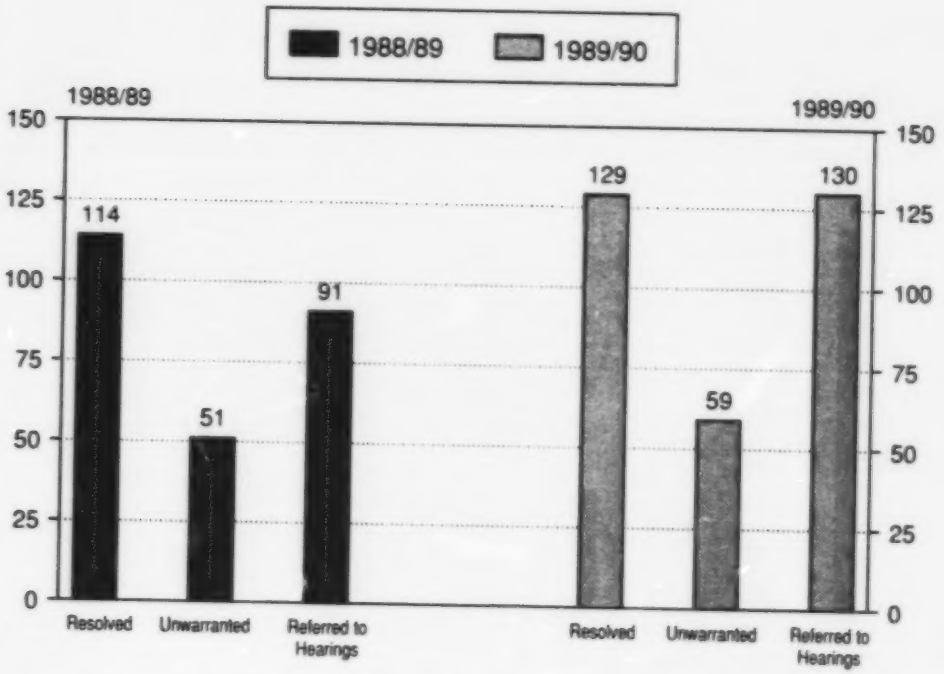
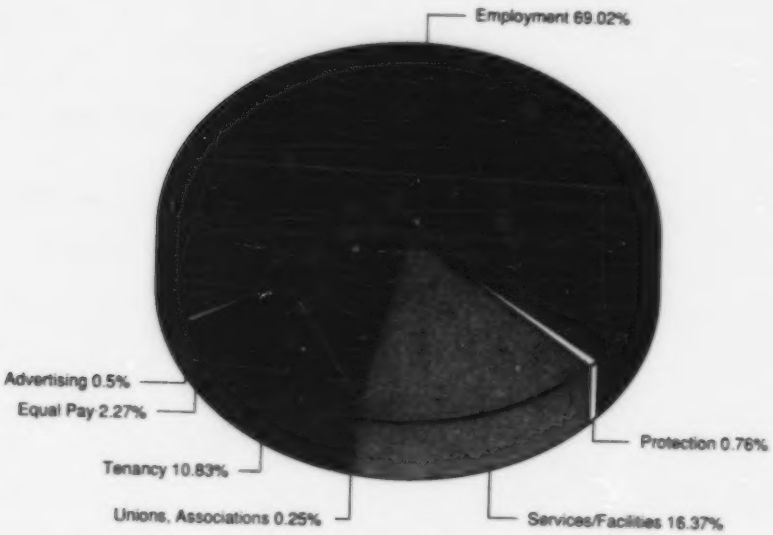


TABLE 6

Complaints by Section of the Act

April 1, 1989 to March 31, 1990

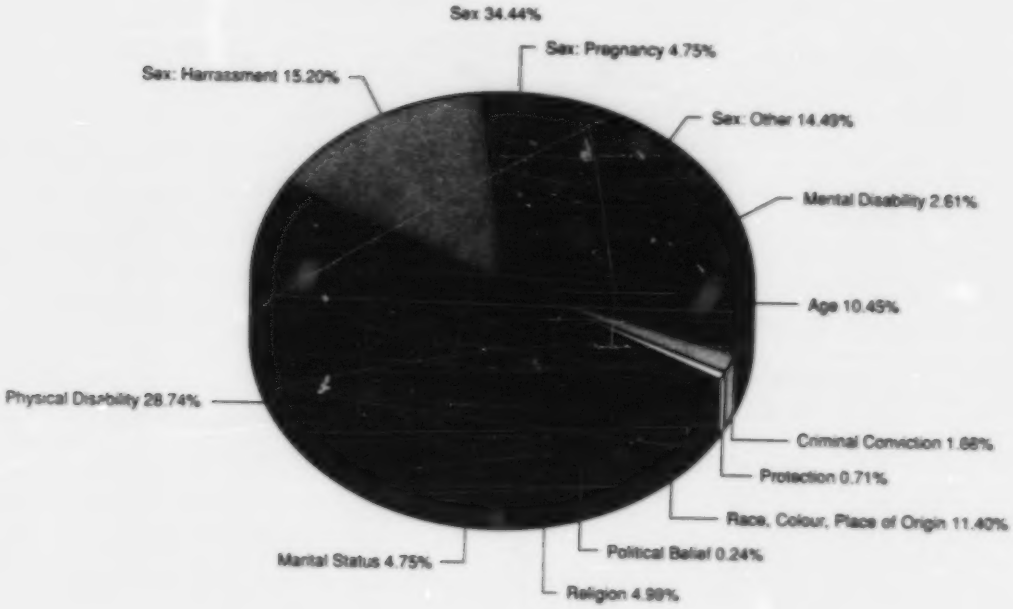


Section 3: Services/Facilities
Section 4: Property
Section 5: Tenancy
Section 6: Advertising
Section 7: Equal Pay
Section 8: Employment
Section 9: Unions, Associations
Section 20: Protection

TABLE 7

Complaints by Prohibited Grounds

April 1, 1989 to March 31, 1990



Appendix D — Financial Report

The Council was allocated $1,403,811 as its budget for the fiscal year 1989-90.

MAJOR EXPENDITURES:

Salaries	$753,004
Rent	$ 94,722
Professional Services	$119,847
Travel	$ 75,500
Office and Business Expenses	$ 44,558

Appendix E — B.C. Council of Human Rights Offices

VICTORIA

British Columbia Council
of Human Rights
2nd Floor, 844 Courtney Street
Victoria, B.C.
V8W 1C4

387-3710
Fax: 387-3643

TOLL FREE NUMBER 1-800-663-0876

VANCOUVER

British Columbia Council
of Human Rights
406, 815 Hornby Street
Vancouver, B.C.
V6Z 2E6

660-6811
Fax: 660-0195

Employment Standards Branch Offices

Room 210
4946 Canada Way
Burnaby, B.C.
V5G 4J6

660-4946

45904 Victoria Avenue West
Chilliwack, B.C.
V2P 2T1

795-8400

100 Cranbrook Street North
Cranbrook, B.C.
V1C 3P9

426-1291

2500 Cliffe Avenue
Courtenay, B.C.
V9N 5M6

334-1225

1201 — 103rd Avenue
Dawson Creek, B.C.
V1G 4J2

784-2390

220, 546 Street Paul Street
Kamloops, B.C.
V2C 5T1

828-4516

2nd Floor, 818 Fort Street
Victoria, B.C.
V8V 1X4

387-1205

301, 1664 Richter Street
Kelowna, B.C.
V1Y 8N3

861-7404

13 Victoria Crescent
Nanaimo, B.C.
V9R 5B9

755-2342

Provincial Buildings
310 Ward Street
Nelson, B.C.
V1L 5S4

354-6550

103, 3547 Skaha Lake Road
Penticton, B.C.
V2A 7K2

492-1333

1044 — Fifth Avenue
Prince George, B.C.
V2L 5G4

565-6120

108, 320 Eby Street
Terrace, B.C.
V8G 5K8

638-3272

540 Borland Street
Williams Lake, B.C.
V2G 1R8

398-4478

Appendix F — The B.C. *Human Rights Act*

HUMAN RIGHTS ACT

CHAPTER 22

Assented to May 16, 1984.

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4. Discrimination in purchase of property
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6. Discrimination in employment advertisements
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8. Discrimination in employment
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Interpretation

1. In this Act

"age" means an age of 45 years or more and less than 65 years;*

"council" means the British Columbia Council of Human Rights;

"employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

"employment" includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent's services relate to the affairs of one principal, and "employ" has a corresponding meaning;

"employment agency" includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;

"occupational association" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

* In January 1988, the British Columbia Court of Appeal in *Connell and Harrison v. U.B.C.* (1988), 49 D.L.R. (4th) 687 found that the definition of age in the *Human Rights Act* is of "no force and effect." The matter was argued before the Supreme Court of Canada in March 1989. The Court has reserved its judgment.

"person" includes an employer, an employment agency, an employers' organization, an occupational association and a trade union;

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

1984-22-1.

PART 1

DISCRIMINATORY PRACTICES PROHIBITED

Discriminatory publication

2. (1) No person shall publish or display before the public, or cause to be published or displayed before the public, a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or class of persons in any manner prohibited by this Act.

(2) Notwithstanding subsection (1) but subject to the *Civil Rights Protection Act*, a person may, by speech or in writing, freely express his opinions on a subject.

1984-22-2.

Discrimination in public facilities

3. No person shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance.

1984-22-3.

Discrimination in purchase of property

4. No person shall

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or

(c) discriminate against a person or class of persons with respect to a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons.

1984-22-4.

Discrimination in tenancy premises*

5. (1) No person shall

(a) deny to a person or class of persons the right to occupy, as a tenant, space that is in any way represented as being available for occupancy by a tenant, or

(b) discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons, or of any other person or class of persons.

(2) Subsection (1) does not apply where a person in any way represents that space is available for occupancy by another person who is to share with him the use of any sleeping, bathroom or cooking facilities in the space.

1984-22-5.

Discrimination in employment advertisements

6. No person shall publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

1984-22-6.

Discrimination in wages

7. (1) No employer shall discriminate between his male or female employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.

(2) For the purposes of subsection (1), the concept of skill, effort and responsibility shall, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.

(3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section where the factor on which the difference is based would reasonably justify the difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which he is entitled under this section, he is entitled to recover from his employer, by action, the difference between the amount paid and the amount to which he is entitled, together with the costs, but

(a) no action shall be commenced later than 12 months from the termination of his services, and

(b) the action applies only to wages of an employee during the 12 month period immediately preceding the date of the termination of his services, or the date of the commencement of his action, whichever date occurs first.

1984-22-7.

* See Appendix G *Residential Tenancy Act* which includes family status as a prohibited ground of discrimination in tenancy.

Discrimination in employment

8. (1) No person or anyone acting on his behalf shall

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person with respect to employment or any term or condition of employment,

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

(2) No employment agency shall refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

(a) as it relates to age, to any bona fide scheme based on seniority, or

(b) as it relates to marital status, physical or mental disability, sex or age, to the operation of any bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

1984-22-8.

Discrimination by unions and associations

9. No trade union, employers' organization or occupational association shall

(a) exclude any person from membership,

(b) expel or suspend any member, or

(c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or member, or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

1984-22-9.

PART 2

COUNCIL OF HUMAN RIGHTS

Council established

10. (1) There shall be established a council known as the British Columbia Council of Human Rights consisting of those members appointed by the Lieutenant Governor in Council to hold office during pleasure.

(2) The Lieutenant Governor in Council shall designate a member of the council as chairman.

(2.1) The council may, in writing, delegate to one or more of its members or to any other person an administrative function of the council.

(2.2) Where a member of the council resigns or where the member's appointment to the council terminates, the member may continue to act as a member of the council in relation to a proceeding that has been commenced under section 14 (1) (d) until the proceeding is completed.

(3) Each member of the council shall be paid the actual and reasonable expenses incurred by him in discharging his duties as a member of the council, and a member who is not an employee under the *Public Service Act* shall be paid remuneration for his services as a member of the council as the Lieutenant Governor in Council orders.

1984-22-10; 1989-53-2.

Complaints

11. (1) A person who alleges that he has been discriminated against contrary to this Act may file a complaint with particulars with the council.

(2) Where the council is satisfied that a person alleged to have been discriminated against contrary to this Act consents to the filing of a complaint and, in the opinion of the council, it is in the interests of that person that the complaint be filed, the council may accept a complaint filed on his behalf by another person.

(3) Where a complaint is filed under subsection (2), the person on whose behalf the complaint is filed shall, for the purposes of sections 12 to 16, be considered to be the complainant.

(4) Subject to section 13, the chairman of the council shall investigate a complaint and endeavour to assist the parties to the complaint to achieve a settlement.

1984-22-11; 1989-53-3.

Inspection of records

12. For the purposes of conducting an investigation, the chairman of the council may make an examination and inquiry that he considers necessary to ascertain whether this Act has been complied with and may

(a) require a complainant or a person who is alleged to have contravened this Act to disclose, orally or in writing, information respecting the subject matter of the complaint, and

(b) require the production of records relating to the subject matter of the complaint.

1984-22-12; 1989-53-4.

Decision not to proceed with investigation

13. (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

(a) is not within the jurisdiction of the council,

(b) could be more appropriately dealt with under another Act,

(c) is trivial, frivolous, vexatious or made in bad faith, or

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

1984-22-13.

Procedure after investigation

14. (1) On completion of an investigation, the chairman shall

(a) refer the complaint to the council for a determination as to whether the proceeding should be discontinued,

(b) [Repealed 1989-53-5.]

(c) submit a report to the minister, or

(d) designate one member of the council to receive, as specified by him, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council

(i) where he considers the complaint is not justified, shall dismiss the complaint, or

(ii) where he considers the complaint is justified, shall make an order described in section 17 (2) (a) and may make an order described in section 17 (2) (b).

(2) Section 16 (4) and (5) applies where oral submissions are made under subsection (1) (d) of this section.

(2.1) A member of the council who is designated under subsection (1) (d) has, for the purposes of that subsection,

(a) the privileges and protection of section 12 of the *Inquiry Act*, and

(b) where oral submissions are made under subsection (1) (d), the power of sections 15 and 16 of the *Inquiry Act*

given to a commissioner appointed under Part 2 of that Act.

(3) On receipt of a report under subsection (1) (c), the minister shall

(a) refer the complaint to a board of inquiry, or

(b) order that the proceedings be discontinued.

1984-22-14; 1985-51-32, effective July 19, 1985 (B.C. Reg. 232/85); 1989-53-5.

Decision to be communicated in writing

15. A determination under section 14 (1) (a), an order under section 14 (1) (d) (ii) or section 14 (3) or the dismissal of a complaint under section 14 (1) (d) (i) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

1984-22-15; 1989-53-6.

PART 3

BOARD OF INQUIRY

Board of inquiry

16. (1) A board of inquiry shall consist of one person appointed by the minister.

(2) A board of inquiry has, for the purposes of a reference under section 14 (3), the power, privileges and protection of sections 12, 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.

(3) The persons who are entitled to be parties to proceedings before a board of inquiry are

(a) the complainant,
(b) where the complaint was filed under section 11 (2), the person who filed the complaint on behalf of the complainant,
(c) the person who is alleged to have contravened this Act, and
(d) any other person whom the board of inquiry considers would be directly affected by an order made by it.

(4) A board of inquiry shall give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.

(5) A board of inquiry may receive and accept on oath, affidavit or otherwise, evidence or information that it, in its discretion, considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.

(6) Where a party to a matter before a board of inquiry complains to the minister that the board has failed to proceed expeditiously, the minister may, after consulting the parties and the board, issue an order he considers necessary to ensure the matter will be disposed of without further undue delay.

1984-22-16.

Disposition of complaints

17. (1) Where a board of inquiry considers that a complaint is not justified, it shall dismiss the complaint.

(2) Where a board of inquiry considers that a complaint is justified, it
(a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention, and
(b) may order the person who contravened this Act to
(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, he was denied contrary to this Act, and
(ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost, or expenses incurred, by the contravention,

and, in addition to or instead of any other order under this paragraph, may order the person who contravened this Act to pay to the person discriminated against an amount not exceeding $2 000.

(3) A board of inquiry may make an order as to costs it considers appropriate.

(4) Where an order is made under subsection (2) or (3) or section 14 (1) (d) (ii), the council or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and on being filed the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

1984-22-17.

PART 4

GENERAL

Disclosure

18. (1) A member of the council or any person employed in the administration of this Act shall not be required in any proceedings or otherwise, except before a board of inquiry or in a judicial review respecting a complaint under this Act,

(a) to give evidence, or
(b) to produce records

relating to information obtained or a communication received in the investigation of a complaint under this Act.

(2) The minister shall not be compelled to give evidence in any proceedings or otherwise respecting any matter, communication or information connected with the administration or operation of this Act, or otherwise coming to his knowledge under or by reason of this Act.

1984-22-18.

Exemptions

19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

1984-22-19.

Protection

20. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

1984-22-20.

Style of cause for proceedings

21. (1) A proceeding under this Act in respect of a trade union, employers' organization or occupational association may be taken in its name.

(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his authority shall be deemed to be an act or thing done or omitted by that person.

1984-22-21.

Technical and other matters

22. (1) No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity.

(2) Where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails.

1984-22-22.

Delegation of powers

22.1 (1) The chairman may, in writing, delegate to one or more of the members of the council or to any other person any of his powers or duties under this Act, except the power of delegation under this section.

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the chairman of a power so delegated.

(3) A delegation may be made subject to any terms the chairman considers appropriate.

(4) Where the chairman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until the delegation is revoked by a succeeding chairman.

(5) A person purporting to exercise a power of the chairman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1989-53-7.

Offence Act

23. Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

1984-22-23.

Regulations

24. The Lieutenant Governor in Council may make regulations.

1984-22-24.

Appropriation

25. [Spent. 1984-22-25.]

26. [Spent. 1984-22-26.]

Transitional

27. (1) Where, before this Act came into force, an allegation was referred by the minister to a board of inquiry under section 16 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and the board of inquiry has not, on the day this Act came into force, disposed of the allegation, the board of inquiry shall continue to have the same power to inquire into, to make orders in respect of and to dispose of the allegation as it had before this Act came into force, and in relation to that allegation or an allegation referred to in subsection (2) of this section, sections 13, 17, 18, 21 and 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall, notwithstanding the repeal of that Act, remain in force.

(2) Where before this Act came into force an allegation was made orally or in writing to the director and there is no evidence that the allegation was received by the director under section 15 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, within 6 months after the date of the alleged contravention, the board of inquiry to which the allegation was referred by the minister has, notwithstanding section 23 of

that Act or any decision of a court to the contrary, the same power to inquire into, to make orders in respect of and to dispose of the allegation as it would have had before this Act came into force had the allegation been received within 6 months after the date of the alleged contravention.

(3) Nothing in this Act affects an order made before this section came into force by a board of inquiry under section 17 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and notwithstanding the repeal of that Act, section 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall remain in force in relation to that order.

1984-22-27.

Commencement

28. This Act comes into force by regulation of the Lieutenant Governor in Council.

1984-22-28.

[Note: Section 10 effective July 20, 1984, B.C. Reg. 231/84, Part II Gazette Vol. 27, p. 336. Sections 1 to 9 and 11 to 27 effective September 14, 1984, B.C. Reg. 282/84, Part II Gazette Vol. 27, p. 456.]

This Legislation is a convenience copy only, not a government verified version. It may not be accurate or up to date.

APPENDIX G — Amendments to the B.C. *Human Rights Act*

LABOUR AND CONSUMER SERVICES STATUTES AMENDMENT ACT, 1990

Residential Tenancy Act

Discrimination against families prohibited

48.1 (1) In this section

"child" means a child as defined in section 1 of the *Family Relations Act*;*

"disabled person" means a person who has a loss, or reduction, of functional ability and activity, and includes a person who

(a) requires a wheelchair for transportation, or

(b) has visual or hearing impairments;

"family" means 2 or more persons who will live together and includes a parent and the child of that parent;

"parent" means a parent as defined in section 1 of the *Family Relations Act*.**

(2) No persons shall

(a) refuse to enter into a tenancy agreement, or

(b) include a term or condition in a tenancy agreement on a basis that discriminates against a family because it includes a child.

(3) No person shall publish, display, circulate, broadcast or cause to be published, displayed, circulated or broadcast words, symbols or other representations that serve to promote the contravention of subsection (2).

(4) Subsection (2) does not apply to a tenancy agreement for

(a) a rental unit in residential premises where each residential unit is reserved for rental to a person 55 years of age or older or to 2 or more persons where at least one person is 55 years of age or older,

(b) a rental unit in residential premises where

(i) the rental unit is only offered for rent to a disabled person or to 2 or more persons where at least one person is a disabled person, and

(ii) the rental unit and the residential premises, to the extent that enables a disabled person to reside in the rental unit, are designed to accommodate a disabled person and conform to the standards established by B.C. Reg. 192/87,

(c) the rental of rooms in a private residence by the occupier of that residence, or

(d) a rental unit in a class of residential premises prescribed by the Lieutenant Governor in Council.

(5) A person who alleges that he or she has been discriminated against contrary to this section may file a complaint with particulars with the council under the *Human Rights Act* and the *Human Rights Act* applies to a complaint so filed as thought it were filed under section 11 of the *Human Rights Act* for discrimination contrary to section 5 of the *Human Rights Act*.

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* The *Family Relations Act* defines a child as a person under the age of 19 years.

** The definition of a parent in *The Family Relations Act* is very broad and includes anyone having legal responsibility for the care of a child, including an adoptive parent, grandparents, step-parents, and anyone in the position of legal guardian.

Appendix H — List of Publications

Human Rights Kit complete kit includes the following:

- Employer's Guide
- Hiring Guide
- Disability and the *Human Rights Act*
- Sexual Harassment and the *Human Rights Act* (also available in Punjabi, Chinese and French)

Human Rights Act Brochure

Legal Aid for Human Rights Complaints (Published by the Legal Services Society of British Columbia)

A Guide for Young People in the Workplace

After Your Complaint is Filed . . .

Conducting Hearings

Newsletter

Annual Report

Tenancy Discrimination Fact Sheet